CHIN AH KONG

v.

PROGRESSIVE INSURANCE SDN. BHD. & ANOR. CASE

HIGH COURT, KUANTAN
DATO' HJ. LAMIN B. HJ. MOHD. YUNUS J.
[CIVIL SUIT NO. 411 OF 1984
CONSOLIDATED WITH
CIVIL SUIT NO. 412 OF 1984]
26 NOVEMBER 1992

INSURANCE LAW: Personal accident insurance - Whether plaintiff had any other personal accident insurance at the time of completing proposal form with defendants - Whether failure to declare earlier personal accident insurance material fact - Whether failure to disclose warrants cancellation of policy.

The plaintiff filled in and signed a proposal form for personal accident insurance with the defendants. One of the questions in the form was whether he had any other insurance.

At the time when the plaintiff proposed with the defendants, he had in fact submitted a proposal form to another insurance company but had no knowledge whether the said proposal had been accepted and had not paid the premium to effect coverage. The plaintiff did not inform the defendants of his proposal with the other insurance company.

The defendants sought to repudiate liability on the grounds of non-disclosure by the plaintiff of a material fact warranting cancellation of the policy.

Held:

[1] The proposal for insurance is subject to acceptance or otherwise by a insurance company. The acceptance must be communicated to the proposer and the premium paid before the contract of insurance becomes binding.

[2] The plaintiff had no knowledge of the acceptance by the insurance company of his proposal at the time he proposed insurance with the defendants.

[3] The plaintiff could not be guilty of non-disclosure and there was no justification to warrant the cancellation of the policies.

[Plaintiff's claim allowed]

Sources referred to:
MacGillivray and Parkington on Insurance Law: 6th Ed., p. 409, para 970

For the plaintiff - Ahmad Shah Balendran; M/s. Balendran Chong Bodi & Khatijah
For the defendants [Suit 411 of 1984] - Tunku Farik Ismail; M/s. Azim, Ong & Krishnan
For the defendants [Suit 412 of 1984] - Khoo Eng Chin; M/s. Khoo & Sidhu

JUDGMENT

Hj. Lamin B. Hj. Mohd. Yunus J:
There are two issues for Civil Suit No. 411/84 posed at the trial as formulated in Enclosure 14B, *viz:*

(a) Whether on 27 January 1984 at the time of completing the proposal form with Progressive Insurance Sdn. Bhd., the plaintiff had any other personal accident insurance other than AIA Co. Ltd.
(b) Is the failure to declare earlier personal accident insurance a material fact to warrant cancellation.

For Civil Suit No. 412/84, the issues are:

(a) Whether on 13 February 1984 at the time of completing the proposal form with United Oriental Assurance, the plaintiff had any other personal accident insurance other than AIA.
(b) Is the failure to declare earlier personal accident insurance a material fact to warrant cancellation.

For both cases, in respect of issue (a), I have to ascertain whether the plaintiff honestly disclosed all he knew when answering the questions in the respective proposal forms. In the proposal form for Malaysia British Assurance which the plaintiff (PW1) signed on 18 January 1984 (ABD 411 - Part II p. 6) his answer for question No. 10, was "Yes. AIA Life RM300,000 and P/A RM500,000". In respect of the proposal form for Progressive Insurance which PW1 signed on **27** January 1984 (ABD 411 - Part I p. 7) his answer for question No. 5 was the same as above.

According to PW2, the policy with MBA together with the Cover Note were handed to the plaintiff (PW1) on **14 February** 1984 and the plaintiff paid the premium on the same day. PW2 said that he held on to the policy until the premium was paid. In practice the maximum

number of days he could wait for the payment of the premium was 30 days. PW2 confirmed that he did not tell PW1 that he had the Cover Note (MBA) on 19 January 1984 and it is reasonable to expect PW1 not to have any knowledge of the Cover Note before 14 February 1984, i.e. when PW2 handed it over to PW1. PW2 also confirmed that the Cover Note would be valid for 30 days. So the person named therein would be covered for the 30 days provided the premium was paid. So it is quite clear to me that at the time of completing the proposal with Progressive Insurance Sdn. Bhd. on 27 January 1984, the plaintiff did not know that he had any other personal accident insurance other than with AIA. Of course, it is a fact that he filled in the proposal form for MBA on 18 January 1984, but he could not have known that he was in fact going to have a policy with MBA until he paid the premium.

PW2 was further cross-examined as to whether Cindy Chin had knowledge of PW1's policy with MBA. Cindy Chin is PW1's sister. She worked for PW2. PW2 admitted that she was aware of the proposal form and the Cover Note. There is no evidence that Cindy Chin had informed her brother (PW1) of the policy. Her knowledge cannot be imputed to PW1. What seems to be the decisive factor is the element of payment of the premium because the policy and the Cover Note would not be handed over to PW1 until the premium had been paid. No doubt PW2's company had a running account with MBA, but both the policy and the Cover Note were issued through PW2 who had the authority to withhold and cancel the policy. The money for the premium had to be paid to PW2. PW3 (the Asst. Manager of Gaya Under writing Services Sdn. Bhd.) confirmed in cross-examination that if the premium was not paid, the policy would be cancelled and Progressive Insurance would give him a Credit Note in respect of the premium which Progressive Insurance would have earlier debited from the running account.

Now question No. 5 in the proposal form for Progressive Insurance is worded such:

> Have you any other Personal Accident Insurance? If so, please give details.

Question No. 10 in the proposal form for MBA is somewhat similarly worded:

> Do you have Personal Accident, Life or Sickness Insurance in this or any other company? If "Yes" ...

So bearing in mind as to what really dictates the operation of a policy, it appears to me that as the two questions use the words "Have you" or "Do you have", they connote possession of current knowledge, something existing in the mind and they, therefore must necessarily seek to ask whether at the time the form is being filled in the would-be insured person has any other effective Personal Accident insurance for which he himself has paid its premium. They cannot mean something which he has no knowledge of its existence. On this question, DW1 in his evidence gave a misleading impression as to what is required of PW1. In examination-in-chief he said:

> In the present case, the insured did not disclose that he had already proposed for insurance with MBA.

If the question in the proposal form is, "Have you **proposed** ...," then PW1 will be guilty of non-disclosure because he had completed the stage of "proposal" by filling in the proposal form which was the only thing he did. But the question in the proposal form for Progressive Insurance is simply, "Have you ...". In the circumstances PW1 could not be guilty of non-disclosure as he had no knowledge of the coverage by MBA, when he completed the proposal form with Progressive on 27 January 1984, until he paid the premium on that policy with MBA on 14 February 1984.

Again the proposal form contains simply "proposal" and nothing more and therefore, it is subject to acceptance or otherwise by the Insurance Company. I agree that on the authorities cited by the Counsel for the plaintiff, before it becomes a binding contract of insurance, the acceptance must be communicated to the proposer and the premium paid. The contract does not become binding at the time when a debit to premium is made on the running account at the office, e.g. of Progressive Insurance. Neither does it becomes binding at the time when the policy or the Cover Note is prepared. The policy or the Cover Note is really a form of acceptance by the Insurance Company and it will not be binding until it is communicated to the proposer and he pays the premium. If the premium is not paid, then both

the policy and the Cover Note are worthless pieces of paper. The premium is the consideration for the coverage. (see para 970, p. 409 **MacGillivray and Parkington on Insurance Law:** 6th Ed.)

With regard to Civil Suit 412/84, the plaintiff filled in a proposal form with United Oriental Assurance (UOA) on 13 February 1984 (see ABD 412 - Part II p. 1). His answer to question No. 13 was "Yes" and the particulars he gave were "A.I.A. RM500,000". The wording of the question for number 13 was:

> Are you at present insured against accidents? If so, please give particulars.

In evidence before this Court, the plaintiff confirmed that as on 13 February 1984 he did not have any other policy other than with AIA. He also said that when he filled in the form on 13 February 1984, he had not paid the premium to MBA and Progressive. Regarding the plaintiff's policy with MBA, I found as above, that though he filled in the proposal form on 18 January 1984, he could not have known that he was in fact going to have a policy with MBA until he had paid the premium which he did on 14 February 1984. Upon payment of the premium, both the policy and the Cover Note were handed to him that same day.

Similarly with Progressive, that the plaintiff filled in the proposal form on 27 January 1984. It was for the period of 28 January 1984 to 27 January 1985 (see Cover Note and policy - ABD pp. 4, 5 and 6). But the plaintiff only received the documents from Gaya Underwriters after he had made payment towards the premium. According to PW3, the Assistant Manager of Gaya Underwriting Services Sdn. Bhd., he arranged for the policy on 17 February 1984 and issued a Debit Note on the same day. The Debit Note was accordingly sent to the plaintiff who only on **7 March 1984** went to see PW3 to pay for the premium and on that same day PW3 released the policy to the plaintiff. According to PW3, though the Cover Note was prepared on 28 January 1984, the plaintiff did not know of its existence as he did not tell him that it had been issued. Accordingly, PW3 said "Until the delivery of policy and Cover Note on 7 March 1984, PW1 had no knowledge of its terms". If the premium is not paid the policy will be cancelled.

So with regard to the plaintiff's policy with MBA, he only paid the premium on **14 February 1984** and only on that day were both the policy and the Cover Note handed to him. The premium for his policy with Progressive was paid on **7 March 1984** and only on that day were both the policy and the Cover Note handed to him. Question number 13 in the proposal form for United Oriental Assurance is worded in plain and precise language and if I may repeat it:

> Are you **at present** insured against accidents?

The words "at present" must mean the day he signed the proposal form which was on 13 February 1984, that is, whether on that day he knew that he was being covered against accidents by other insurance company or companies. He would not be able to answer 'Yes' or 'No' if he did not have the knowledge. One is covered only if the premium is paid and only then will he know of the terms of the policy *inter alia* the period for which he is being insured. Clearly therefore, on 13 February 1984 he had no knowledge of both his policies with M.B.A. and Progressive.

I, therefore hold that for the reasons stated above PW1, the plaintiff, could not be guilty of non-disclosure in both cases and accordingly it did not warrant cancellation of the policies concerned. It was agreed before the commencement of the trial that should the plaintiff succeed in his claim, the quantum in each of the two cases would be in the sum of RM175,000 and in the circumstances, I now give judgment accordingly with interest at 8% from the date of the accident, i.e. 12 March, 1984.